

Jason M. Drangel (JD 7204)
EPSTEIN DRANGEL BAZERMAN & JAMES, LLP
60 East 42nd Street, Suite 820
New York, NY 10165
Tel.: (212) 292-5390
Fax: (212) 292-5391

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
ONTEL PRODUCTS CORPORATION	:	
	:	
<i>Plaintiff</i>	:	
	:	
v.	:	Civ. Action No. 07 CV 7356
	:	
AMICO INTERNATIONAL CORP.	:	
and AMICO POWER CORPORATION	:	
	:	
<i>Defendants</i>	:	
-----X	:	

**DECLARATION OF JASON M. DRANGEL IN SUPPORT OF
REQUEST FOR DAMAGES**

JASON M. DRANGEL, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and a partner of the firm of Epstein Drangel Bazerman & James, LLP, and attorney for Plaintiff in the above-entitled action. I make this affidavit based on my personal knowledge and on the records of my law firm.
2. I make this affidavit in support of Plaintiff's demand for damages and attorneys' fees.
3. On February 29, 2008, Judge Koeltl ordered that Plaintiff was entitled to a default judgment against defendants Amico International Corp. and Amico Power Corporation and referred the matter to a magistrate for an inquest on damages.
4. We purchased a Swivel Sweeper floor and carpet sweeper from Defendants on May 7,

2007 through Ebay. We confirm that the goods are in fact counterfeit.

5. Defendants were placed on notice of the trademark and copyright infringement in this action by two different law firms on May 9, 2007 and May 16, 2007. See attached warning letters attached hereto as Exhibits 1 and 2.

6. At first, Defendants indicated they purchased only two (2) infringing units at a flea market in China. See correspondence attached hereto as Exhibit 3.

7. Defendants then indicated that neither Defendant purchased any goods. See correspondence attached hereto as Exhibit 4.

8. Later, Defendants admitted to having goods received from a source in China. See correspondence attached hereto as Exhibit 5.

9. In May, 2007 we determined that Defendants sold the infringing goods to a distributor in Texas called The Man Store. We placed The Man Store on notice of the infringement in May, 2007.

10. The Man Store identified Defendants as the source of supply. The Texas distributor shipped its remaining stock of Swivel Sweepers back to Defendants in May, 2007. Attached hereto as Exhibit 6 is a copy of said correspondence received from the distributor identifying defendants as the source and supplying invoices confirming Defendants as the source of the goods.

11. Even though Defendants were placed on notice of infringement on multiple occasions, they continued to sell the infringing goods.

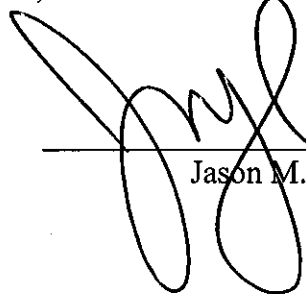
12. We purchased a Swivel Sweeper floor and carpet sweeper from Defendants on August 1, 2007 through Ebay. We confirm that the goods are in fact counterfeit.

13. Defendants denied having any stock of goods other than two units purchased at a flea

market, yet continued to sell substantial amounts of goods to distributors and through Ebay direct to consumers. Defendants are willful infringers.

14. Plaintiff has incurred \$8,536 in legal fees in connection with this matter. Plaintiff has incurred costs of \$1,100 for filing the complaint, service of the complaint and investigator services.

5/13/08.



Jason M. Drangel

EXHIBIT 1

VENABLE
LLP

575 7th Street, NW
Washington, DC 20004-1601

Telephone 202-344-4000
Facsimile 202-344-8300

www.venable.com

Joe A. Shull

202 -344-4821

jashull@venable.com

May 9, 2007

**VIA E-MAIL: james@amicousa.com
and sales@amicousa.com**

Amico International Corporation
4825 Gregg Road
Pico Rivera, California 90660
Attn: President

Re: Infringement of Ontel Products' Intellectual Property Rights – Swivel Sweeper

Gentlemen:

This law firm represents Ontel Products Corporation of Fairfield, New Jersey, the owner/licensee of the Swivel Sweeper product and associated intellectual property rights. These rights include:

- the Swivel Sweeper® trademark (registered with the U.S. Patent and Trademark Office, May 1, 2007, #3235563),
- retail packaging copyright (registered with the U.S. Copyright Office, July 12, 2005, # VA 1-326-528),
- patent (U.S. Patent No. #7,152,267, issued to Bryan Kaleta, December 26, 2006 and licensed to Ontel), and
- trade dress.

It has come to Ontel's attention that you have been offering to sell a counterfeit version of the Swivel Sweeper product both at trade fairs and on your website.

Ontel values its intellectual property portfolio and respects the intellectual property rights of others as well. Ontel considers this a serious matter and asks that you give it immediate attention. Under U.S. law, you may be subject to actual and punitive damages in a U.S. court of law if you are found liable for willful and intentional infringement of Ontel's intellectual property rights, together with reasonable attorney's fees.

VENABLE
LLP

Amico International Corporation
May 9, 2007
Page 2

Ontel requests that you immediately cease and desist from further offering or selling the Swivel Sweeper product; and turn over to Ontel at 21 Law Drive, Fairfield, New Jersey 07004, the existing inventory of product and packaging. You are further requested to provide to us a full and complete accounting of all product which you have sold, including the volume, revenues earned, dates of such sales, and contact information for the buyers, as well as the name and contact information for, and copies of all correspondence with, the manufacturer of the product. We ask that this information be provided to us by Monday, May 14, 2007, and that you accompany the information with a certification to us that you have taken the actions requested above.

Sincerely yours,

Joe A. Shull

Joe A. Shull

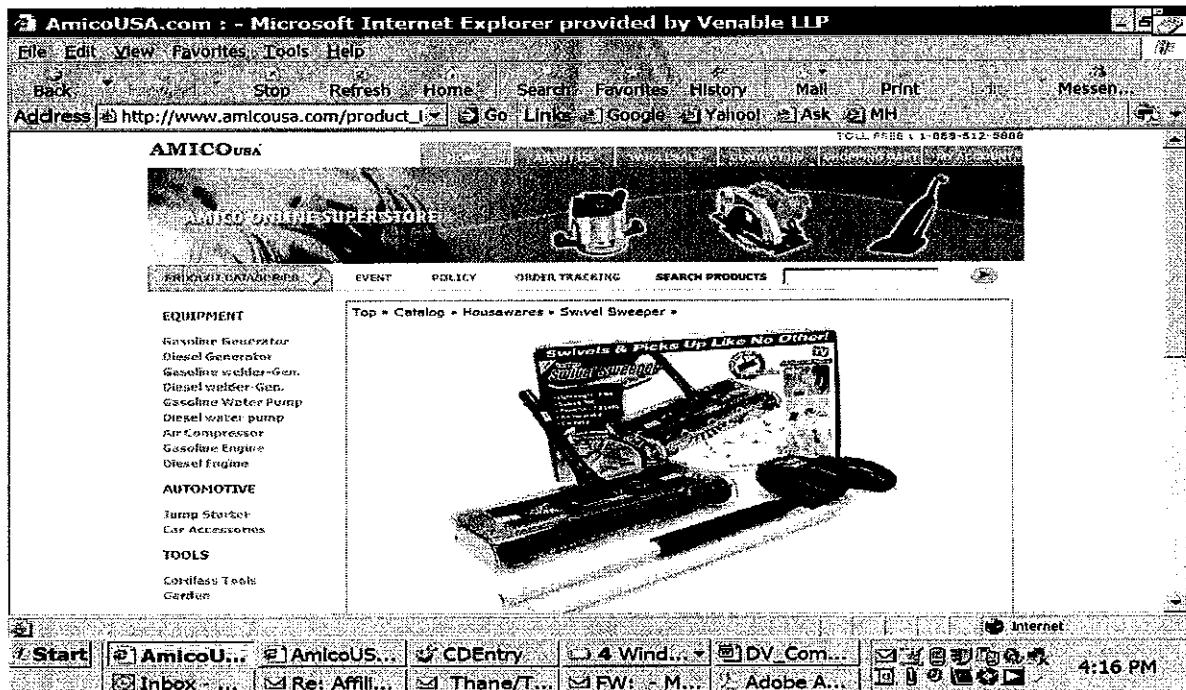


EXHIBIT 2

Epstein Drangel Bazerman & James LLP

60 East 42nd Street, Suite 820, New York, NY 10165 - Phone: (212) 292-5390 - Fax: (212) 292-5391 - E-mail: mail@ipcounselors.com

May 16, 2007

Via Federal Express

Ms. Amy Jiang
Amico International Corp.
4825 Gregg Road
Pico Rivera, CA 90660-2106

Re: Infringement of SWIVEL SWEEPER floor and carpet sweeper

Dear Ms. Jiang:

We represent Ontel Products Corporation ("Ontel") in intellectual property matters. Ontel markets consumer products. One of Ontel's most successful items is a patented floor and carpet cleaning device marketed under the trademark SWIVEL SWEEPER ("Product"). Ontel is the exclusive owner and/or licensee of any and all patents (U.S. Pat. No. 7,152,267), trademarks (U.S. Ser. Nos. 76/632,600 and 76/653,371), copyrights (VA1-326,528) and trade dress for the Product and its packaging ("Product IP").

Ontel has gone to great lengths to protect its interests in and to this Product. No one other than Ontel is authorized to manufacture, advertise, offer for sale or sell any goods utilizing the Product IP without the express written permission of Ontel. It has recently come to our attention that your company is marketing and selling an inferior, counterfeit and/or knock-off of Ontel's SWIVEL SWEEPER Product, in product packaging which is identical or virtually identical to Ontel's. We have purchased and examined the goods you are marketing and selling and have confirmed that they are inferior, counterfeits and/or knock-offs. Ontel considers these actions to be a blatant disregard of its intellectual property rights.

Your use of Ontel's Product IP constitutes patent infringement, trademark infringement, trademark counterfeiting, copyright infringement and unfair competition. There is little question that the Product IP was intentionally copied to confuse consumers who are interested in purchasing genuine Ontel Products. Accordingly, Ontel is entitled to treble damages, statutory damages, and attorneys' fees.

Consequently, we hereby demand that you **immediately cease and desist** any and all advertising, marketing, use and sale of the infringing goods. We also demand that you do the following no later than **five (5) days** from your receipt of this letter:

- 1) Confirm in writing that all importation, exportation, manufacture (domestic and foreign), offering for sale, sale, distribution, advertising, promotion and display of the infringing goods has ceased;
- 2) Provide the identity of the source of all infringing goods sold or offered for sale by you (i.e. name and address of the manufacturer, importer or distributor – including providing all relevant purchase documentation);
- 3) Provide us with documentation showing all purchases (number of units and price), sales (number of units and price) and current inventory of the infringing goods;

Epstein Drangel
Bazerman & James LLP

Ms. Amy Jiang
Amico International Corp.
May 16, 2007
- Page 2 -

- 4) Surrender all infringing goods in your possession, custody or control;
- 5) Provide the names and addresses of any and all persons to whom the infringing goods have been distributed or sold or by whom orders for any such items have been placed, and the details of such sales and orders, including total dollar amounts; and
- 6) Provide copies of any and all correspondence received or sent by you concerning the infringing goods, including but not limited to consumer inquiries and complaints or agreements between you, and any seller of vendor of the infringing goods.

We consider your conduct to constitute a serious violation of Ontel's rights and to be very damaging to their businesses and reputations. Your failure to respond to this letter will only assure us of your company's intention to continue willfully infringing on Ontel's rights. In such a situation, we have been instructed to take all actions necessary to enforce our client's rights to the full extent of the law.

Nothing in this letter shall be construed as a waiver or relinquishment of any right or remedy possessed by Ontel.

Very truly yours,

Jason M. Drangel

cc: Ontel Products Corp.
Our Ref.: 1432-043

EXHIBIT 3

AMICO International Corp.

www.amicousa.com

4825 Gregg Road, Pico Rivera, CA 90669, U.S.A. • Tel: (562) 908-0088 • Fax: (562) 908-1891

May 9, 2007
Ontel
21 Law Drive
Fairfield, NJ 07004

Attn: Joe A. Shull

We have read your request to remove the Swivel Sweeper from are booth and are website and we just wanted to let you know that Amico is a generator manufacture and has nothing to do with selling a sweeper we just saw somewhere else and we taught that it was a good product to sell we only bought two pieces for sample. Amico has no inventory for this item at all; therefore we have not solved this item out. The swivel sweeper was removed from are booth and from are website.

Sincerely,



Amy Jiang

Jason M. Drangel

From: Shull, Joe A. [JAShull@Venable.com]
Sent: Thursday, May 24, 2007 2:39 PM
To: Jason Biziak; Chuck Khubani
Subject: Swivel Sweeper - Amico's Infringing Product

May 24, 2007

Dear Jason and Chuck,

See the chain of e-mails between me and Amy Jiang, President of Amico. She states that Amico picked up the Swivel Sweeper at a flea market in China and copied the picture on its website from Amazon, and is not offering the product now that she understands Ontel's ownership rights.

Is this enough for you?

When I receive the sample she is sending, I can send it to you so you can attempt to identify if it is counterfeit or one of your actual units.

Joe A. Shull
Venable LLP
575 7th Street, N.W., Washington, D.C. 20004-1601
Tel: 202-344-4821; Fax: 202-344-8300
www.venable.com; Email: jashull@venable.com

-----Original Message-----

From: evelyn@amicous.com [mailto:evelyn@amicous.com]
Sent: Thursday, May 24, 2007 2:31 PM
To: Shull, Joe A.
Subject: Re: Ontel Products' Swivel Sweeper

The picture was obtain from amazon.com, and was passed to are website.

----- Original Message -----

From: Shull, Joe A.
To: amy@amicous.com
Cc: evelyn@amicous.com
Sent: 2007?5?24? 10:56 AM
Subject: Ontel Products' Swivel Sweeper

May 24, 2007

Dear Ms. Jiang,

Thank you for the below report.

One more question. Where did you obtain the picture of the product and Ontel's retail box which was displayed on the Amico website?

Joe A. Shull
Venable LLP
575 7th Street, N.W., Washington, D.C. 20004-1601
Tel: 202-344-4821; Fax: 202-344-8300
www.venable.com; Email: jashull@venable.com

-----Original Message-----

From: evelyn@amicous.com [mailto:evelyn@amicous.com]
Sent: Thursday, May 24, 2007 1:50 PM
To: Shull, Joe A.
Cc: amy@amicous.com
Subject: Re: Ontel Products' Swivel Sweeper

May 24, 2007

Dear, Mr. Joe Shull

Will be shipping out the sample pieces that we have today via ups. Were not able to send you a copy of the receipt because theres no

8/14/2007

receipt. This sweepers were purchased by a friend of Mrs. Jiang in china in a flea market and he paid cash for them and the cashier did not give him a receipt for the items.
In the last email I had mentioned that Amico wasn't going to sell the sweeper, I already removed it from my website and I'm sending you the sample that my friend gave me so there's no way I could sell this item if I don't have it anymore. The tracking number is 1Z6833RV0341576098.

----- Original Message -----

From: Shull, Joe A.
To: amy@amicous.com
Cc: evelyn@amicous.com
Sent: 2007?5?16? 11:54 AM
Subject: Ontel Products' Swivel Sweeper

May 16, 2007

Dear Ms. Jiang,

This acknowledges receipt of your letter dated May 9, 2007 which was attached to your e-mail sent to me today. Would you kindly:

1. Fax or scan in to me the purchasing correspondence which demonstrates that Amico only purchased two sample pieces and which would also identify the party from whom the samples were acquired.
2. Send to me by overnight delivery or as soon as possible the two product samples that Amico acquired.
3. Confirm by reply e-mail that Amico will not offer this item for sale again unless it acquires the product from Ontel Products Corp or an authorized distributor.

Joe A. Shull
Venable LLP
575 7th Street, N.W., Washington, D.C. 20004-1601
Tel: 202-344-4821; Fax: 202-344-8300
www.venable.com; Email: jashull@venable.com

J.S. Treasury Circular 230 Notice: Any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties that may be imposed under the Internal Revenue Code or by any other applicable tax authority; or (b) promoting, marketing or recommending to another party any tax-related matter addressed herein. We provide this disclosure on all outbound e-mails to assure compliance with new standards of professional practice, pursuant to which certain tax advice must satisfy requirements as to form and substance.

This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.

EXHIBIT 4

Jason M. Drangel

From: amy [amy@amicous.com]
Sent: Friday, August 17, 2007 5:18 PM
To: Jason M. Drangel
Subject: Re: LAWSUIT NOTICE - INFRINGEMENT OF ONTEL SWIVEL SWEEPER

Jason,
I am so surprised to receive this notice. AMICO INTERNATIONAL AND AMICO POWER never sell this item you mentioned.
Please check it out and let me know.
Regards
Amy Jiang

----- Original Message -----

From: Jason M. Drangel
To: james@amicousa.com ; sales@amicousa.com ; amy@amicous.com ; evelyn@amicous.com
Cc: scottxing@sina.com ; Customerservice@amicous.com
Sent: Friday, August 17, 2007 1:14 PM
Subject: LAWSUIT NOTICE - INFRINGEMENT OF ONTEL SWIVEL SWEEPER

Dear Sir / Madam:

Attached is a copy of a lawsuit filed today against your company for infringement of the Ontel Swivel Sweeper.

If you would like to settle amicably, you should immediately discontinue sales and contact the undersigned to discuss.

Jason M. Drangel

Jason M. Drangel
Epstein Drangel Bazerman & James, LLP
60 East 42nd Street, Suite 820
New York, NY 10165
T: 212-292-5390
F: 212-292-5391
E: jdrangel@ipcounselors.com

EXHIBIT 5

Dear Robert,

Here is the invoice attached:

1. For The Man Store: attached.
2. Wenqin Xing: He is a friend of us, so he just took this 60pcs and tried to sell. He didn't pay us yet. No invoice available.
3. David Zhang: He is also a friend of us, He took 24pcs and he paid by cash. No invoice available.

This is all about this case.

More questions, pls let me know and thank you so much for your help.

Best regards

Amy Jiang

AMICO POWER CORP.

4821 Gregg Road

Pico Rivera, CA 90660

Tel:(562)908-1788 Fax:(562)908-1899

Invoice

Invoice Number: 5684

Invoice Date: May 1, 2007

1

Sold To:

The Man Store

107 S. Chadbourne

San Angelo, TX 76903

Ship to:

The Man Store

107 S. Chadbourne

San Angelo, TX 76903

Customer ID	Customer PO	Payment Terms	
07-09-117		Wire	
Sales Rep ID	Shipping Method	Ship Date	Due Date
07	Cust. Pickup	5/1/07	5/31/07

Item	Description	Quantity	Unit Price	Extension
LS3102	Swivel Sweeper	108pcs	13.15/po	1,420.20
<p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">NOV 16 2007</p> <p style="text-align: center;">Epstein Drangel Bazerman & James, LLP</p>				

Check/Credit Memo No:

Subtotal 1,420.20

Sales Tax

Freight Amount

TOTAL 1,420.20

EXHIBIT 6

The Man Store

107 S. Chadbourne
San Angelo, Texas 76903
325-486-1540
325-486-9991 fax

May 18, 2007

Jason M. Drangel
Epstein Drangel Bazerman & James, LLP
60 East 42nd Street, Suite 820
New York, NY 10165

Here is the information you requested. I appreciate you working with us on this. I bought 2 lots as indicated. The first lot did not have an invoice. I submitted the original wire transfer request proving payment. When broken down, the numbers match the prices quoted on the 2nd invoice. The second lot was never shipped to us.

Michael Strain

RECEIVED
MAY 18 2007
Epstein Drangel
Bazerman & James, LLP

Summary of events surrounding the sale of Swivel Sweepers

May 1 2007	Purchased 288 pcs	\$	13.15 each	\$ 3,787.20	\$ 199.00	Shipping
May 15 2007	Purchased 204 pcs	\$	13.15 each	\$ 2,682.60	\$ 199.00	Shipping

Total purchase price \$ 6,867.80

	Sale price	
Total Sold	102 \$ 18.99	\$ 1,936.98
Total given away	6 \$ -	\$ -

Total eBay fees	\$ 206.70
PayPal Fees	\$ 102.00
Refunded from Amico	\$ (5,792.80)

Total expenses \$ 1,383.70

Total Sales \$ 1,936.98

Total Profit \$ 553.28

Labor, packing materials \$100 to \$150

Not sure what the actual profit involved here considering the time to unload and prepare the items for shipment. I feel like a victim as well on this. I bought from a trusted vendor who cheated me out of my time, trust and now my profit. I bought them in good faith that the items were "real" and never thought to ask if they were copies as I have not experienced this before.

FACSIMILE COVER PAGE

To : MICHAEL

From : Ellis

Sent : 5/16/2007 at 4:06:08 PM

Pages : 2 (including Cover)

Subject :

Hi Michael:

The check sent out by ups already, the trucking company called me the pallet wasn't ready on pallet, they will come on tomorrow (5/17), please have your warehouse worker get ready earlier, also please have the label on pallet. Thanks.

Regards,

Ellis

Refund

AMICO POWER CORPORATION		214
4625 GREGG RD (562) 999-0099 PICO RIVERA, CA 90680		
PAY TO THE ORDER OF	DATE <u>May 16, 2007</u>	10585/1220 816
<u>The Moss Plaza</u>		\$ <u>5,292.50</u>
<u>Five thousand Seven Hundred Ninety-Two & 50/100</u>		DOLLARS
Bank of America		
Valley Alameda 7777 Valley Blvd Alhambra, CA 91803-8410		
FOR	<u>Deposit into 027082108</u>	
⑈000714⑈ ⑆12200066⑈ 0646746788⑈		



For pickups call (800) 586-9701

FROM SHIPPER (CONSIGNOR)

Name: **THE MAN STORE**
Address: **107 S. CHADBOURNE**
City: **SAN ANGELO**
State: **TX** Zip code: **76903**
Phone: **325 653-9534** NNN NNN-NNNN

SHIP TO (CONSIGNEE)

Name: **AMICO POWER CORP**
Address: **4825 GREGG ROAD**
City: **PICO RIVERA**
State: **CA** Zip code: **90660**
Phone: **562 908-0088** NNN NNN-NNNN

Description of Articles, Special Marks and Exceptions

Units	Description	NMFC	Class	Weight
15	AS-01 X 180 PCS		055	380

PO Numbers, Reference Numbers, Job Numbers, etc.

Special Instructions

Freight Charges - 3rd Party

- ☐ Prepaid
☐ Collect
☒ Third party

Company Check ok for COD Amount

- ☐ Yes
☐ No

COD Amount:

Declared value:

BILL TO:

Name: **AMICO POWER CORP**
Address: **4825 GREGG ROAD**
City: **PICO RIVERA**
State: **CA** Zip code: **90660**
Phone: **562 908-0088** NNN NNN-NNNN

- ☐ By checking this box you acknowledge that this shipment is subject to the provisions of the General Rules Tariff (VSXP 100) issued by Vision Express, Inc. / Wrag-Time Transportation in effect on the date of this shipment.

Print BOL

Cancel

05/15/2007 11:08

562-9081899

AMICO INT'L CORP.

PAGE 01

AMICO POWER CORP.4821 Gregg Road
Pico Rivera, CA 90660

Tel: (562) 908-1788 Fax: (562) 908-1789

Invoice

Invoice Number: 5708

Invoice Date: May 14, 2007

Sold To:The Man Store
107 S. Chadbourne
San Angelo, TX 76903**Ship to:**The Man Store
107 S. Chadbourne
San Angelo, TX 76903

Customer ID		Customer PO	Payment Terms	
07-09-117			PREPAY	
Sales Rep ID		Shipping Method	Ship Date	Due Date
07		Best Way	5/14/07	6/13/07
Item	Description	Quantity	Unit Price	Extension
AS-01	Swivel Sweeper	204pcs	13.15/pc	2,682.60
AE168F-1	6.5HP/3600RPM Gasoline Engine	4pcs	105.00/pc	420.00
<i>Never shipped these to me</i> <i>pd wire 5/15</i> <i>Need Refund today</i>				

Check/Credit Memo No:

Subtotal 3,102.60

Sales Tax

Freight Amount 199.00

Payment/Credit Applied

TOTAL 3,301.60

Thank you for your business.

3301.60

Texas State Bank
San Angelo, Texas
Phone 325-944-7522
Fax 325-925-7017

DATE 05/15/07

WIRE AMOUNT \$3301.60

NAME The Man Store

ACCOUNT TO DEBIT [REDACTED]

RECEIVING BANK INFORMATION

BANK NAME Bank of America

ABA NUMBER 121 000 358

ADDRESS Alhambra, CA

BENEFICIARY INFORMATION (WHO YOU WANT TO CREDIT)

ACCOUNT NAME Amico Power Corp

ACCOUNT NUMBER 08167 48788

SPECIAL INSTRUCTIONS _____

UPON WRITTEN REQUEST, I AUTHORIZE TEXAS STATE BANK TO DEBIT THE MENTIONED ACCOUNT ABOVE FOR THE AMOUNT OF THE WIRE TRANSFER AND THE WIRE FEE INCURRED WITH THE EXECUTION OF THIS REQUEST.

[REDACTED SIGNATURE]
SIGNATURE

05/15/07
DATE

BANK USE ONLY

ACCEPTED BY _____

WIRE FEE _____

VERIFICATION
WITH WHOM _____

*Never shipped
to us*

Texas State Bank
San Angelo, Texas
Phone 325-944-7522
Fax 325-925-7017

DATE 05/01/07

WIRE AMOUNT \$3986.20

NAME The Man Store

ACCOUNT TO DEBIT 

RECEIVING BANK INFORMATION

BANK NAME Bank of America

ABA NUMBER 121 000 358

ADDRESS Alhambra, CA

BENEFICIARY INFORMATION (WHO YOU WANT TO CREDIT)

ACCOUNT NAME Amico Power Corp

ACCOUNT NUMBER 08167 48788

SPECIAL INSTRUCTIONS _____

UPON WRITTEN REQUEST, I AUTHORIZE TEXAS STATE BANK TO DEBIT THE MENTIONED ACCOUNT ABOVE FOR THE AMOUNT OF THE WIRE TRANSFER AND THE WIRE FEE INCURRED WITH THE EXECUTION OF THIS REQUEST.


SIGNATURE

05/01/07
DATE

BANK USE ONLY

ACCEPTED BY _____

WIRE FEE _____

VERIFICATION
WITH WHOM _____

*NO invoice received
for this payment
288 x \$13.15 \$199
shipping \$3986.20*